

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

BILLY EUGENE STARNES,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. CIV-07-925-HE
	)	
ERIC R. FRANKLIN, <i>et al.</i> ,	)	
	)	
Respondents.	)	

**REPORT AND RECOMMENDATION**  
**CONCERNING THE PROPER PARTIES**

The Petitioner, Mr. Billy Starns, is a state prisoner seeking a writ of habeas corpus under 28 U.S.C. § 2254.<sup>1</sup> Three of the respondents seek dismissal, contending they are not proper parties.<sup>2</sup> The Court should grant the request.

Mr. Starns properly identified Mr. Eric Franklin as a party. But, Mr. Starns also named three other respondents:

- the Director of the Department of Corrections,
- the Oklahoma County District Court, and
- the State of Oklahoma.<sup>3</sup>

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<sup>1</sup> Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 by a Person in State Custody (Aug. 17, 2007).

<sup>2</sup> Motion to Dismiss Parties Respondent (Sept. 10, 2007).

<sup>3</sup> Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 by a Person in State Custody at p. 1 (Aug. 17, 2007).

The only proper respondent is the Petitioner's custodian,<sup>4</sup> who is Mr. Franklin.<sup>5</sup> The Director of the Department of Corrections, the Oklahoma County District Court, and the State of Oklahoma are improperly designated as respondents.<sup>6</sup> Accordingly, the Court should grant the motion to dismiss, with Mr. Franklin remaining as the only proper respondent.

The Petitioner has the right to object to this report and recommendation.<sup>7</sup> Such objections must be filed with the Court Clerk for the United States District Court.<sup>8</sup> The deadline for objections is November 19, 2007.<sup>9</sup> The failure to timely object to this report and recommendation would preclude appellate review of the suggested ruling.<sup>10</sup>

This report and recommendation does not terminate the referral.

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<sup>4</sup> See 28 U.S.C. § 2243 (2000) ("The writ [of habeas corpus]. . . shall be directed to the person having custody of the person detained.").

<sup>5</sup> See *Rumsfeld v. Padilla*, 542 U.S. 426, 435-36 (2004) (stating that in "'core'" habeas challenges, "the proper respondent is the warden of the facility where the prisoner is being held" (citations omitted)).

<sup>6</sup> See *Harris v. Champion*, 51 F.3d 901, 906 (10th Cir. 1995) ("Because neither the Oklahoma court nor its judges were plaintiffs' custodians, they were not proper parties to a habeas action and the district court did not err in dismissing plaintiffs' habeas claims against them."); *Moles v. State*, 384 F. Supp. 1148, 1150 (W.D. Okla. 1974) (holding that habeas jurisdiction does not exist when the petition named the State of Oklahoma and a county as the only respondents).

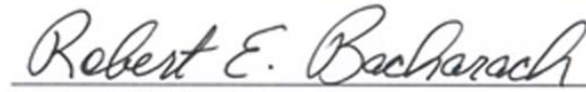
<sup>7</sup> See 28 U.S.C. § 636(b)(1) (2000).

<sup>8</sup> See *Haney v. Addison*, 175 F.3d 1217, 1219-20 (10th Cir. 1999).

<sup>9</sup> See W.D. Okla. LCvR 72.1.

<sup>10</sup> See *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

Entered this 30th day of October, 2007.

A handwritten signature in cursive script, reading "Robert E. Bacharach", written in black ink on a light-colored background.

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Robert E. Bacharach

United States Magistrate Judge